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*Attorneys for Defendant and Counterclaim-Plaintiff
Delta Scientific Corporation*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MERIDIAN RAPID DEFENSE GROUP
LLC, a California limited liability
company,

Plaintiff,

vs.

DELTA SCIENTIFIC CORPORATION,
a California corporation,

Defendant.

DELTA SCIENTIFIC CORPORATION,
a California corporation,

Counterclaim-Plaintiff,

vs.

MERIDIAN RAPID DEFENSE GROUP
LLC, a California limited liability
company,

Counterclaim-Defendant.

Case No. 2:23-cv-07222-GW (PDx)

**DELTA SCIENTIFIC
CORPORATION'S NOTICE OF
MOTION AND MOTION FOR
LEAVE TO FILE THIRD
AMENDED ANSWER AND
COUNTERCLAIMS**

DATE: March 4, 2024

TIME: 8:30 a.m.

CTRM: 9D, 9th Floor

First Street Courthouse

Hon. George H. Wu

655 North Central Avenue
Suite 2300
Glendale, CA 91203-1445

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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 4, 2024 at 8:30 a.m., or as soon
3 thereafter as the matter may be heard in Courtroom 9D of the above-entitled court,
4 located at 350 W. First Street, Los Angeles, California 90012, Defendant and
5 Counterclaim-Plaintiff Delta Scientific Corporation (“Defendant” or “Delta”) will
6 and hereby does move for leave to file a Third Amended Answer and
7 Counterclaims to: 1) add Peter D. Whitford, an individual, as a
8 Counterclaim-Defendant; 2) supplement its existing affirmative defenses and
9 counterclaims and add new affirmative defenses and counterclaims based on newly
10 discovered evidence.

11 This Motion is brought pursuant to Fed. R. Civ. Proc. 15(a)(2) and 16(b)(4)
12 and Local Rule 15, and on the basis that Delta has good cause to file the proposed
13 Third Amended Answer and Counterclaims after the deadline initially prescribed
14 by this Court’s Scheduling Order (Dkt. 27). On January 10, 2024, Delta’s counsel
15 discovered a sworn declaration by proposed counterclaim-defendant
16 Peter Whitford, the founder and CEO of Plaintiff Meridian Rapid Defense Group
17 LLC (“Meridian” or “Plaintiff”), confirming his access to and receipt of the design
18 and operating principles of Mr. Jeffrey Fromm’s Rapidly Deployable Barrier
19 (“RDB”) 54 barrier. Mr. Fromm’s information and discoveries formed the basis
20 for the patents asserted in this action, and Mr. Whitford knowingly omitted Mr.
21 Fromm as a co-inventor on the asserted patents. Further, Mr. Whitford’s personal
22 knowledge that he obtained the asserted patents by fraud by knowingly omitting
23 Mr. Fromm as a co-inventor and his knowing submission of false inventorship
24 declarations to the U.S. Patent Office gives rise to a *Walker Process* counterclaim
25 to be added in Delta’s proposed Third Amended Answer and Counterclaims.

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1 This Motion is based on this Notice of Motion, the accompanying
2 Memorandum of Points and Authorities, the supporting Declaration of
3 Kyle W. Kellar, and all other facts and evidence presently before the Court or to be
4 presented at the time of hearing, if any.

5 This Motion is made following a conference of counsel pursuant to Local
6 Rule 7-3, which occurred on January 29, 2024.

7
8 Dated: February 5, 2024

Respectfully submitted,

9 LEWIS ROCA ROTHGERBER
10 CHRISTIE LLP

11 By /s/Kyle W. Kellar
12 Constantine Marantidis
13 G. Warren Bleeker
14 Kyle W. Kellar

15 *Attorneys for Defendant*
16 *and Counterclaim-Plaintiff*
17 *Delta Scientific Corporation*
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